STATE OF MICHIGAN

COURT OF APPEALS

CHRISTOPHER SYPIEN and HEATHER SYPIEN, Plaintiffs-Appellees, v ROBERT BARBER, III, and JESSICA BARBER, Defendants-Appellants.	UNPUBLISHED February 14, 2006 No. 257652 Kent Circuit Court LC No. 02-011889-CH

Before: Borrello, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

In this property dispute, defendants appeal as of right from the circuit court's order granting summary disposition to plaintiffs. We reverse and remand for further proceedings. This appeal is being decided without oral argument in accordance with MCR 7.214(E).

The trial court provided a convenient statement of the underlying facts:

> This case emanates from a dispute over the existence of an easement of plaintiffs' land. The inherent question . . . is whether defendants may continue to use the driveway over plaintiffs' land or if this Court [should] require them to install an alternate driveway over their land to the existing easement on the west end of their property.
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> Originally, Maynard Baer owned approximately 6.5 acres of land which was divided into three parcels "A," "B," and "C." Parcels B and C were essentially land locked. In order to provide the owners of Parcel B and C access to the roadway, a 30 foot wide easement was created along the western property lines of the three parcels. Before Baer divided the property, he had used a driveway (not on the 30 foot easement) over what is now Parcel A, to access his home on what is now Parcel B. In September, 2000, Maynard Baer sold Parcel A to plaintiffs and Parcel C to Gerald Wiltzer. Baer retained Parcel B and continued to use the driveway over Parcel A, to access Parcel B. Parcel B was later sold to defendant, Jessica Pope (Barber), in November, 2000. The dispute concerns defendants' continued use of the existing driveway over Parcel A to access the roadway. Alternatively, Wiltzer has installed a paved drive on the 30 foot easement to provide himself with access to the roadway.

> Plaintiffs had two estimates done to determine the cost of installing a new driveway from defendants' home to the 30 foot easement. [One] estimates that it may range from $2,500 to $2,800 [and the other] estimates a cost of $1,550.
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> However, defendants predict a much higher cost to install the driveway. In addition to the cost of the driveway, Ada Township's regulations would require than an additional six inches of gravel must be added to either side of the existing paved drive along the 30 foot easement on the west side of the three properties. Gerald Wiltzer opines that, due to the topography of defendants' land, it would cost $25,000 to create a useable and stable driveway from the easement to defendants' residence. Summarily, he stated that the underground springs and wet soil on Parcel B would not be able to support a gravel driveway and that extensive measures should be taken to support a paved driveway.
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> Plaintiffs filed their Complaint to Quiet Title on December 2, 2002. . . . Defendants claimed, in their answer, that they have a right to use the driveway on plaintiffs['] land . . . .

At issue is whether defendants were entitled to continue to use the existing driveway across plaintiffs' property, as a quasi-easement ripening into an easement by necessity with the severing of the original estate into multiple parcels. On cross-motions for summary disposition, the trial court concluded that no necessity existed:

> In light of estimates made for the cost of installing a driveway suitable to meet the needs of defendants of a similar nature to the current unpaved driveway they are now using; and this Court's own direct visual inspection of the subject property, this Court finds that the driveway over plaintiffs' property is not reasonably necessary for the fair enjoyment of defendants' property and, therefore, no implied easement is created. Under the facts and circumstances of this case, the effort and expense is not significant enough for the easement to be reasonably necessary and to result in the creation of an easement by necessity.

We review a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). Plaintiffs brought their motion for summary disposition under MCR 2.116(C)(8) and (C)(10). Because the trial court cited many pieces of documentary evidence, plus its own view of the site, in rendering its decision, it is apparent that the court decided this case pursuant to (C)(10). In reviewing a decision on such a motion, "this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004).

"If a person owns two adjacent tracts of land and imposes a servitude on one tract for the benefit of the other, there exists only a quasi-easement that may ripen into a full easement when one of the tracts is conveyed." *Schmidt v Eger*, 94 Mich App 728, 736-737; 289 NW2d 851 (1980). Establishment of such an easement "requires that at the severance of an estate an obvious and apparently permanent servitude already exists over one part of the estate and in

favor of the other. It also requires a showing of necessity . . . ." *Id.* at 733. In this case, only the latter showing is in dispute.

For purposes of the kind of easement asserted, a showing of only reasonable necessity is required, not strict necessity. *Id.* at 735. In *Schmidt*, *supra*, we held that where the alternative to the easement in dispute would involve an expenditure of $30,000 to $35,000, reasonable necessity was established. *Id.*

In this case, the trial court acknowledged evidence suggesting that constructing a new driveway for use with the recorded easement, as an alternative to continued use of the existing driveway, would cost as much as $25,000. But the court did not hold that this was not sufficiently burdensome to establish reasonable necessity for continued use of the existing driveway instead. Rather, the court decreed that a less expensive roadway of "similar nature to the current unpaved driveway they are now using" would be "suitable to meet the needs of defendants," then expressly found for that reason that reasonable necessity did not exist, evidently relying on estimates for gravel surfaces, plus the court's own view of the site.

In deciding motions for summary disposition, "[t]he court may not make factual findings or weigh credibility." *Manning v Hazel Park*, 202 Mich App 685, 689; 509 NW2d 874 (1993). A court is obliged to decide a (C)(10) motion by viewing all the evidence in the light most favorable to party opposing the motion. *Walsh*, *supra*.

In this case, because the trial court did not rule on whether the highest estimates in evidence of the costs of discontinuing use of the existing driveway, and constructing a new one for use with the recorded easement, established the element of reasonable necessity, but instead resolved a factual dispute in this regard with a finding that a lesser expense would be involved, we reverse the result below and remand this case to the trial court for further proceedings.

Reversed and remanded. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald